

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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**No. 16-13653-J**

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**IN RE: ANTONIO GRIFFIN,**

**Petitioner.**

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**Application for Leave to File a Second or Successive  
Motion to Vacate, Set Aside,  
or Correct Sentence, 28 U.S.C. § 2255(h)**

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**Before TJOFAT, MARCUS and WILSON, Circuit Judges.**

**BY THE PANEL:**

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Antonio Griffin has filed an application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. As an initial matter, however, we must determine whether Griffin's proposed § 2255 motion would be second or successive.

The record shows that Griffin filed an original § 2255 motion in 2011, which the district court granted to allow Griffin to pursue an out-of-time appeal. A search of district court records from all districts within Georgia confirms that Griffin has not filed any other § 2255 motions challenging his current sentence. We have held that a successful § 2255 motion to permit an out-of-time direct appeal does not render a subsequent collateral challenge "second or successive"

under the Anti-Terrorism and Effect Death Penalty Act of 1996 ("AEDPA"). *McIver v. United States*, 307 F.3d 1327, 1330 (11th Cir. 2002). Therefore, because Griffin's prior § 2255 motion was granted to permit an out-of-time appeal, the instant § 2255 motion is not "second or successive" within the meaning of § 2244(b). *See McIver*, 307 F.3d at 1330.

Accordingly, Griffin's application for leave to file a second or successive petition is hereby DENIED as unnecessary. The Clerk shall TRANSFER Griffin's application back to the district court, along with a copy of this order, and the district court is instructed to accept the § 2255 motion as filed on the date when it was originally filed with the district court.